IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 4018 OF 1993

Pune Vidyarthi Griha & Ors.... Petitioner

versus

Shashikala B. Yadav & anr. ..... Respondent.

Mr. P.S.Dani with Ms. Sharvari Shailendra for the petitioner.
Mr. A.M.Joshi for espondent no.1.

CORAM; A.P. DESHPANDE, J.
DATED; 13TH FEBRUARY, 2007

JUDGMENT;

1. The petitioner is a society and Public Trust, which administers the Minimum Competency Vocational Course (MCVC) wherein classes of standard XI and XII are conducted and thus the college satisfies the definition of junior college. The conditions of service of its employees are regulated by MEPS Act and the Rules made thereunder. The petitioner issued an advertisement before commencement of academic session 1991-92 and invited applications for various posts including the post of lecturer/Assistant teacher to teach junior college classes. The advertisement did mention that preference will be given to the candidates belonging to backward classes. However no specific reservation was provided for any post in the advertisement. The respondent being desirous of

getting an appointment as lecturer in English for which she was very much qualified, applied for the said post and came to be selected. On selection the petitioner issued an appointment order in favour of the respondent, appointing the respondent temporarily only for one academic session i.e. for the period from 17-7-1991 to 30-4-1992. This appointment of the respondent was accorded approval by Education Officer and the approval order categorically mentions that the appointment of the respondent is approved only for one academic session. The approval further shows in para 1 that clear understanding should be given to the candidates that their appointments are purely temporary and that too against the reserved vacancies.

The order of approval is dated 30-9-1991.

2. One more document is crucial to decide the issue which arise for adjudication in this petition and the said document is No Objection Certificate issued by the Social Welfare Officer, Pune dated 20-3-1992. The No Objection letter permits the petitioner to fill in the post by appointing the respondent only for one academic session as candidates from backward class category was not available despite the advertisement being published.

3. So to indicate the nature of appointment, four documents are available. (1) the advertisement, (2)

the appointment order, (3) approval order and the last (4) the No Objection letter issued by the Social Welfare Officer. The appointment order, the approval order and the no objection certificate clearly provide that the appointment is purely temporary for one academic section i.e. till the end of academic session 1991-92. The approval order and the No objection certificate granted by the Social Welfare Officer goes further to indicate that the appointment of the respondent was against the vacancy earmarked for reserved category candidate. In this factual situation, the respondent was terminated from service at the end of academic session 1991-92.

4. It is the case of the respondent as is revealed from the appeal filed before the tribunal that the post wherein the respondent was working was advertised in the next academic session viz. 1992-93 and the respondent along with some other candidates had applied for the said post. In the process of selection, the respondent was rejected and some other candidate was selected. Hence aggrieved by non selection of the respondent for appointment to the post of junior lecturer for the subject of English, the respondent filed an appeal before the Presiding Officer, School Tribunal. A written statement -cum-reply was filed by the petitioners before the tribunal raising a preliminary objection about

maintainability of the appeal by contending that only in limited contingencies the appeal is maintainable under 9 of the Act before the tribunal and the said contingency relates to dismissal, removal, termination, reduction in rank or supersession of claims. The respondent had made a grievance on account of non selection in the process of selection, which was conducted by the petitioner. Thus the appeal itself was not maintainable as the same was falling outside the purview of section 9. Thereafter by amending the appeal action of termination of service was assailed before the tribunal.

5. The tribunal has allowed the appeal filed by the respondent by holding that the respondent was appointed against the permanent post and clear vacancy and his appointment was not against the post reserved for backward class candidate. A further finding is recorded that the appointment of the respondent needs to be treated as an appointment on probation and proceeding to constru the appointment as on probation, the tribunal has concluded that the termination is unsustainable as the same was not on account of unsatisfactory work or behaviour.

6. The tribunal, allowing the appeal has granted reinstatement with full backwages and aggrieved by this, this writ petition has been filed. The learned

counsel appearing for the petitioner management, has submitted that the appointment of the respondent was temporary appointment only till the end of academic session and if the respondent is discontinued from service at the end of the term of appointment, which is less than one year, the same does not suffer from any illegality whatsoever. The learned counsel for the petitioner has relied upon the advertisement, the appointment order, the approval order and the no objection certificate issued by the Social Welfare Officer, to contend that the appointment of the respondent was only for one academic session. In this factual situation, the learned counsel for the petitioner has placed reliance on a judgment of the Apex Court in **Hindustan Education Society and another Vs. Sk.Kaleem Sk.Gulam and others reported in (1997) 5 SCC page 152.** In the said case, the appointment order issued to the employee clearly indicated that the appointment is purely temporary for a period of 11 months in a clear vacancy and the Supreme Court having considered the provisions contained in section 5 of the Act observed thus:

> "In view of the above and the order of appointment, the appointment of the respondent was purely temporary for a limited period. Obviously, the approval given by the competent authority was for that temporary

> appointment. As regards permanent appointments, they are regulated by sub sections (1) and (2) of section 5 of the Act according to which the Management shall, as soon as possible, fill up in the manner prescribed. Every permanent vacancy in a private school by appointment of a person duly qualified to fill in such vacancy. Every person so appointed shall be put on probation for a period of two years subject to the provisions of sub sections (4) and (5). He shall, on completion of the probation period of two years, be confirmed."

Then the Supreme Court has concluded by observing that:

> "The appointment of the respondent cannot be considered to be a permanent appointment."

7. Having regard to the judgment of the Supreme Court, I am of the clear view that the appointment of the respondent cannot be considered to be a permanent appointment, as the respondent was appointed temporarily for one academic session. The termination is as per the terms of the contract and hence cannot be faulted. It is next submitted by the learned counsel for the petitioner that the appeal filed by

the respondent was barred by limitation and no application for condonation of delay was filed. It is then submitted that the tribunal has not passed any order condoning the delay and hence the impugned judgment and order will have to be held to be without jurisdiction. The learned counsel Mr. Dani has also contended that though the tribunal is possessed of power to condone the delay, such power has to be, in the first place, invoked and in the second place, exercised by the tribunal. The learned counsel submits that the tribunal has failed to exercise its power in regard to condonation of delay, as the final judgment and order does not make a reference in regard to allowing the prayer for condonation of delay. Per contra, the learned counsel for the respondent submits that in the memo of appeal the petitioner has made a prayer for condonation of delay and the tribunal will have to be understood to have condone the delay by implication in as much as the tribunal has allowed the appeal on merit, though it had not specifically dealt with the prayer for condonation of delay. As I have held that the appointment of the respondent was not permanent appointment, and was a temporary appointment, the school tribunal was not justified in setting aside the termination order and granting reinstatement to the respondent. I need not consider the issue in regard to condonation of delay. It may be incidently stated that respondent has hardly put in

less than one year of service as a temporary appointee. The judgment and order passed by the tribunal was stayed during pendency of this writ petition. In the result, the present writ petition deserves to be allowed and I proceed to allow the same. The judgment and order passed by the tribunal is quashed and set aside. Rule made absolute in above terms with no order as to costs.

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